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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MICHAEL MCFARLAND, derivatively on
behalf PAYMENT DATA SYSTEMS, INC.
and individually on behalf of himself and all
other similarly situated shareholders of
PAYMENT DATA SYSTEMS, INC.,

Plaintiff,

vs.

MICHAEL R. LONG, LOUIS A. HOCH,
LARRY MORRISON, KENNETH KELLER,
and PETER G. KIRBY,

Defendants,

-and-

PAYMENT DATA SYSTEMS, INC., a Nevada
Corporation,

Nominal Defendant.

CASE NO.

**VERIFIED SHAREHOLDER
DERIVATIVE AND CLASS
ACTION COMPLAINT**

CIVIL ACTION

JURY TRIAL DEMANDED

1 Plaintiff Michael McFarland (“Plaintiff”) alleges, upon information and belief based
2 upon, *inter alia*, the investigation made by his attorneys, except as to those allegations that
3 pertain to the Plaintiff, which are alleged upon knowledge, as follows:

4 1. Plaintiff asserts this action for breach of fiduciary duties derivatively on behalf of
5 Payment Data Systems, Inc. (“Payment Data” or the “Company”) against the Company’s Board
6 of Directors (the “Board”) and certain executive officers in connection with the excessive and
7 unfair compensation that the Defendants self-interestedly granted themselves during 2013 and
8 2014. Plaintiff also asserts, on behalf of himself and the other public minority shareholders of
9 Payment Data, a direct claim against the Defendants for breaching their fiduciary duties in
10 connection with their improper misappropriation of substantial voting power from the
11 Company’s minority public shareholders.

12 2. Between 2004 and April 2015, the Company’s executive officers and directors
13 consisted of just five individuals: (1) Michael R. Long (“Long”), who has served as the
14 Company’s Chief Executive Officer and Chairman of the Board since co-founding the Company
15 in 1998; (2) Louis A. Hoch (“Hoch”), who has served as the Company’s President, Chief
16 Operating Officer, and a director since co-founding Payment Data in 1998, and has also served
17 as Vice Chairman of the Board since 2007; (3) Larry Morrison (“Morrison”), who has served as
18 the Company’s Senior Vice President, Sales and Marketing Officer since July 2003; (4) Kenneth
19 Keller (“Keller”), who has served as the Company’s Senior Vice President and Chief
20 Technology Officer since 2007; and (5) Peter G. Kirby (“Kirby”), who has served on the Board
21 since 2001, and was the Company’s lone “independent” non-employee director responsible for
22 overseeing management (Long, Hoch, Morrison and Keller are collectively referred to herein as
23
24

1 the “Officer Defendants,” and these individuals along with Kirby are collectively referred to as
2 the “Defendants”).

3 3. Though Kirby originally set the compensation of the Company’s executive
4 officers, by 2008 Kirby relinquished his fiduciary duties altogether and allowed the Officer
5 Defendants to establish their own compensation. As described in detail below, with no one
6 minding the store the Officer Defendants abused their discretion and granted themselves
7 excessive compensation during 2013 and 2014.

8 4. In its 17-year existence, the Company has accumulated net losses of over \$50
9 million. In 2013 the Company had gross profits of just \$974,896, while the Officer Defendants
10 received salaries and cash bonuses of \$724,200 in the aggregate. In other words, during 2013 the
11 Officer Defendants literally transferred to themselves a staggering 74.28% of the Company’s
12 gross profits for the year. In large part due to the compensation payments, the Company suffered
13 a net loss of \$789,039 during 2013.

14 5. In 2014 Payment Data had gross profits of \$4.18 million, while the Officer
15 Defendants granted themselves compensation valued at \$4.53 million in the aggregate. Thus,
16 during 2014 the Officer Defendants transferred to themselves the economic equivalent of the
17 Company’s *entire gross profit* for the year *and then some*.

18 6. The Company has been damaged as a result of the excessive compensation, and
19 accordingly Plaintiff seeks to recover on behalf of the Company damages resulting from
20 Defendants’ unfair self-dealing.

21 7. Defendants’ decision to pay themselves excessive compensation had more than
22 merely economic consequences. A substantial part of Defendants’ 2014 compensation consisted
23 of 22 million shares of Payment Data common stock — valued at \$3.74 million, an improper and
24

1 excessive amount. At the same time, Defendants' decision to the grant themselves 22 million
2 shares increased their collective corporate voting power from 42.97% to 49.97%, effectively
3 giving them voting *control* over the Company.

4 8. In determining their own compensation in 2014 Defendants wrongfully
5 misappropriated economic value and voting power from the Company's minority shareholders,
6 thus harming them uniquely, individually, and in direct proportion to Defendants' benefit.

7 9. As a result, Plaintiff brings a direct claim on behalf of the minority public
8 shareholders to recover damages resulting from the improper stock grant.

9 **JURISDICTION AND VENUE**

10 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) in that
11 Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds
12 \$75,000.00, exclusive of interests and costs. Plaintiff is a citizen of Wisconsin and no defendant
13 is a citizen of Wisconsin. This Court has supplemental jurisdiction over Plaintiff's class claim
14 because that claim is sufficiently related to Plaintiff's derivative claims, over which this Court
15 has original jurisdiction, such that it forms part of the same case or controversy under Article III
16 of the United States Constitution in accordance with 28 U.S.C. § 1367(a).

17 11. This action is not a collusive one to confer jurisdiction on a court of the United
18 States which it would not otherwise have.

19 12. Venue is proper in this district because nominal defendant Payment Data is
20 incorporated in this district.

21 **THE PARTIES**

22 13. Plaintiff Michael McFarland is a shareholder of Payment Data and has been
23 continuously since 2002. Plaintiff is a citizen of Wisconsin.

1 14. Nominal party Payment Data is a Nevada corporation with its principal place of
2 business at 12500 San Pedro, Suite 120, San Antonio, Texas. Payment Data is in the business of
3 processing electronic payments for other companies.

4 15. Defendant Michael R. Long has served as Chief Executive Officer and Chairman
5 of the Board since co-founding the Company in 1998. Long also served as Chief Financial
6 Officer of the Company from September 2003 to March 2015. Long is a citizen of Texas.

7 16. Defendant Louis A. Hoch has served as the Company's President, Chief
8 Operating Officer, and a director since co-founding the Company in 1998, and has also served as
9 Vice Chairman of the Board since 2007. Hoch is a citizen of Texas.

10 17. Defendant Larry Morrison has served as the Company's Senior Vice President,
11 Sales and Marketing Officer since July 2003. Morrison is a citizen of Texas.

12 18. Defendant Kenneth Keller has served as the Company's Senior Vice President
13 and Chief Technology Officer since 2007. Keller is a citizen of Texas.

14 19. Defendant Peter G. Kirby has served on the Board since 2001. Kirby is a citizen
15 of Texas.

16 **FURTHER SUBSTANTIVE ALLEGATIONS**

17 20. Payment Data generates revenues by charging fees for the electronic processing
18 of payment transactions.

19 21. Payment Data is a small company with revenues of just \$25.92 million in the
20 aggregate during the past three years (2012-2014).The Company's common stock is quoted on
21 the OTC Bulletin Board under the ticker symbol "PYDS." As of June 26, 2015, Payment Data
22 had a market capitalization of approximately \$51 million.

1 22. Since co-founding the Company in 1998, Long has served as Chief Executive
2 Officer and Hoch has served as President and Chief Operating Officer. Long also served as Chief
3 Financial Officer from September 2003 until March 2015.

4 23. From 2003 until March 2015, only two other executive officers, Morrison, and
5 Keller, have been employed by the Company. Morrison has served as the Company's Senior
6 Vice President and Marketing Officer since July 2003, and Keller has served as the Company's
7 Senior Vice President and Chief Technology Officer since 2007.

8 24. During the initial years of its existence, Payment Data had a functioning Board to
9 oversee management. Between 1999 and 2003, the Company had a Board consisting of between
10 five to seven members, including Long (who served as Chairman of the Board) and Hoch.
11 During this time, the Board had an independent Audit Committee and an independent
12 Compensation Committee, both of which were comprised of at least two and as many as four
13 members.

14 25. Following the resignation of four directors between 2002 and 2003, by 2004 the
15 Board consisted of just three individuals: (1) Long (the Chairman), (2) Hoch (who became Vice
16 Chairman in 2007), and (3) Kirby.

17 26. Between 2004 and April 2015, not a single new person was appointed to the
18 Board. Indeed, the Board did not (and still does not) have a formal Nominating Committee
19 responsible for identifying and recommending suitable candidates to the Board.

20 27. Accordingly, for more than a decade, the Board comprised two members of
21 management (Long and Hoch) and just one purportedly "independent" director (Kirby).

1 28. With Kirby the lone “independent” director on the Board responsible for
2 overseeing management, and management themselves constituting a majority of the Board, there
3 was effectively no oversight.

4 29. Between 2004 and April 2015, Kirby served as the lone member of the Board’s
5 Audit Committee. In its public filings, Payment Data acknowledges that Kirby does not meet the
6 criteria to constitute an “audit committee financial expert” as defined under the SEC’s rules.

7 30. Likewise, between 2004 and 2007, Kirby served as the lone member of the
8 Board’s Compensation Committee, which as described in the Company’s annual proxy
9 statements during that period, had “authority to set all forms of compensation of the Company’s
10 executive officers.”

11 31. The Board did away with the fig leaf of the Compensation Committee altogether
12 sometime in 2007 or 2008. After 2007, the Company’s public filings no longer mention the
13 existence of a Compensation Committee.

14 32. Instead, beginning in 2007 Kirby simply allowed the executive officers
15 themselves to decide how they would be paid. And the looting began.

16 33. On February 27, 2007, Long entered into an employment agreement with the
17 Company which, among other things, provided for an annual salary, bonus payments, and stock
18 awards, through December 31, 2011. *Hoch* signed the employment agreement on behalf of the
19 Company. That same day, Hoch himself entered into an employment agreement with the
20 Company which, among other things, provided for an annual salary, bonus payments, and stock
21 awards through December 31, 2011. *Long* signed the employment agreement on behalf of the
22 Company.

34. Thereafter, on November 12, 2009, April 12, 2010, January 14, 2011, and July 2, 2012, each of Long and Hoch entered into various amendments of their respective employment agreements with the Company. The amendments to Long's employment agreement were signed by Hoch on behalf of the Company, and the amendments to Hoch's employment agreement were signed by Long on behalf of the Company.

35. With Kirby missing in action, between 2007 and 2012 Long, Hoch, Keller, and Morrison raided the Company's coffers by paying themselves excessive salaries and cash bonuses, *i.e.*, precisely what the "market" will bear when individuals determine the value of their own services and the "buyer" is captive.

36. Specifically, as reflected in the following chart, between 2007 and 2012, Payment Data made gross profits of approximately \$7.4 million, while the Officer Defendants literally took for themselves in excess of \$3.14 million in the form of self-determined salaries and cash bonus payments, a staggering 42.45% of the Company's gross profits (which does not even include certain compensation paid to Keller and Morrison that was not disclosed in Payment Data's public filings):

	2007	2008	2009	2010	2011	2012	Total
Revenues	\$3,036,554	\$3,001,487	\$3,218,674	\$2,618,864	\$4,813,257	\$7,345,974	\$24,034,810
Cost of Services	\$2,481,126	\$2,422,364	\$2,429,629	\$2,019,602	\$3,093,891	\$4,186,963	\$16,633,575
Gross Profit	\$555,428	\$579,123	\$789,045	\$599,262	\$1,719,366	\$3,159,011	\$7,401,235
Salary Plus Cash Bonuses	2007	2008	2009	2010	2011	2012	Total
Long	\$205,000	\$300,000	\$190,000	\$24,000	\$240,000	\$291,699	\$1,250,699
Hoch	\$190,000	\$275,000	\$175,000	\$24,000	\$240,000	\$273,692	\$1,177,692
Keller	\$89,421	\$104,200	\$104,200	\$104,200	*	*	\$402,021
Morrison	\$100,000	*	*	\$24,000	\$65,500	\$122,000	\$311,500
Total	\$584,421	\$679,200	\$469,200	\$176,200	\$545,500	\$687,391	\$3,141,912

*= The Company has not disclosed Keller's compensation for 2011 and 2012 and Morrison's compensation for 2008 and 2009.

37. But, unfortunately, Defendants were not done.

1 38. In addition to the foregoing salaries and cash bonuses, the Officer Defendants also
2 granted themselves tens of millions of shares of Payment Data common stock.

3 39. Specifically, as disclosed in the Company's public filings, between 2007 and
4 2012 the following stock awards were made to the Officer Defendants as additional
5 "compensation" for their services:

- 6 • On February 27, 2007, Long and Hoch were each granted 500,000 shares of
7 common stock and 2,500,000 shares of restricted common stock;
- 8 • On November 1, 2007, Long and Hoch were each granted 3,085,715 shares of
9 common stock;
- 10 • On January 9, 2008, Long and Hoch were each granted 7,750,000 shares of
11 restricted stock and Keller was granted 500,000 shares of common stock and
12 1,550,000 shares of restricted stock;
- 13 • On November 12, 2008, Long and Hoch were each granted 6,171,429 shares of
14 common stock;
- 15 • On November 1, 2009, Long and Hoch were each granted 7,200,000 shares of
16 common stock;
- 17 • On November 4, 2010, Long and Hoch were each granted 5,400,000 shares of
18 restricted common stock;
- 19 • On October 4, 2012, Long and Hoch were each granted 1,000,000 shares of
20 restricted stock, Keller was granted 500,000 shares of restricted stock, and
21 Morrison was granted 450,000 shares of restricted stock.

22 40. As stated in the Company's public filings, many of the above-mentioned stock
23 awards to Long and Hoch were awarded as annual bonuses pursuant to the terms of their
24 respective employment agreements. As described above, though, the employment agreements
themselves were anything but the product of good faith arm's-length negotiations.

 41. As a result of the above-described stock awards (as well as additional stock
awards made between 2003 and 2006), Defendants drove the gravy train into majority voting
control of the Company.

42. As of June 13, 2003, the Officer Defendants collectively owned just 8.9% of Payment Data's outstanding common stock.

Stock Ownership As of 6/13/2003	# Shares Owned	% of Shares Outstanding
Long	900,002	4.34%
Hoch	936,638	4.52%
Morrison	0	0.00%
Keller	0	0.00%
Total	1,836,640	8.86%

* Data taken from Payment Data's Schedule 14A Proxy Statement filed with the SEC on June 19, 2003. Morrison and Keller had yet to be employed by the Company.

43. But by December 31, 2012, the Officer Defendants collectively owned 54.13% of Payment Data's outstanding common stock.

Stock Ownership As of 12/31/2012	# Shares Owned	% of Shares Outstanding
Long	34,728,628	24.33%
Hoch	36,503,975	25.58%
Morrison	2,410,695	1.69%
Keller	3,612,490	2.53%
Total	77,255,788	54.13%

* Data for Long, Hoch, and Morrison taken from the Company's Form 10-K Annual Report filed with the SEC on April 1, 2013. Data for Keller calculated from Keller's Form 4 filings. Based on 142,725,833 shares of Payment Data common stock outstanding as of December 31, 2012.

44. With over 50% voting control, the Officer Defendants had the power to approve any action that would otherwise require approval of a majority of the Company's shareholders.

45. In the next two years Defendants' compensation practices went from bad to worse.

46. In 2013, the Company had gross profits of \$974,896. And during 2013, Long, Hoch, Morrison, and Keller received salaries and cash bonuses of \$724,200 in the aggregate.

	2013
Revenues	\$5,180,362
Cost of Services	\$4,205,466
Gross Profit	\$974,896
Salary Plus Cash Bonuses	2013
Long	\$275,000
Hoch	\$235,000
Keller	\$104,200
Morrison	\$110,000
Total	\$724,200

47. In other words, during 2013 the Officer Defendants literally transferred to themselves a staggering 74.28% of the Company's gross profits for the year. In large part due to the compensation payments, the Company suffered a net loss of \$789,039 during 2013.

48. Meanwhile, during 2013 and 2014 the collective voting power of the Officer Defendants fell well below 50%, falling to under 43% by late 2014. The reason for this was threefold.

49. First, since 2002 Long and Hoch owed the Company \$535,302 and \$449,371 respectively in connection with the Company's loss on margin loans guaranteed by the Company for Long and Hoch. On March 11, 2013, Long and Hoch paid 2,969,459 and 2,606,051 shares respectively to the Company to satisfy these debts.

50. Second, as disclosed in Form 4s filed by Hoch with the SEC, during 2013 and 2014 Hoch sold an aggregate of more than 2.2 million shares of Payment Data common stock.

51. And third, on December 22, 2014, the Company entered into an Asset Purchase Agreement with Akimbo Financial, Inc. ("Akimbo"), a company in the business of prepaid card

1 program management, pursuant to which the Company agreed to purchase substantially all of the
2 assets of Akimbo for \$3 million, the value of which would be paid in Payment Data common
3 stock. As a result, prior to the end of 2014, the Company issued 13,456,940 shares of restricted
4 stock to the owners of Akimbo.

5 52. It did not take long for the Officer Defendants to replenish their lost voting power.

6 53. On December 30, 2014, Long, Hoch, Morrison, Keller, and Kirby each filed a
7 Form 4 with the SEC. The Form 4s indicated that on December 29, 2014 the Defendants
8 received 22,500,000 shares of Payment Data common stock in the aggregate with Long and
9 Hoch each receiving 8,000,000 shares, Morrison and Keller each receiving 3,000,000 shares, and
10 Kirby receiving 500,000 shares (the "December 2014 Stock Grant").

11 54. Using the \$0.17 closing price of the Company's stock price on the OTC Bulletin
12 Board on December 29, 2014, the 22 million shares received by the Officer Defendants had an
13 aggregate value of \$3.74 million.

14 55. The \$3.74 million in equity compensation granted to the Officer Defendants
15 during 2014 is exorbitant.

16 56. During 2014, the Company had gross profits of *\$4.18 million*. Meanwhile, during
17 2014, Long, Hoch, Morrison, and Keller received salaries and cash bonuses of \$794,700 in the
18 aggregate. The salary and cash bonuses received by the Officer Defendants during 2014
19 combined with the \$3.74 million in equity compensation equals *\$4.53 million* in compensation.

20 57. In other words, during 2014 Long, Hoch, Morrison, and Keller transferred to
21 themselves the economic equivalent of the Company's *entire* gross profit for the year *and then*
22 *some*.

1 58. By the end of 2014 the Company had over \$50 million in losses in its history,
2 making the decision by the Officer Defendants even more egregious.

3 59. Remarkably, the compensation awarded to Long and Hoch during 2014 went
4 above and beyond what was due to them under their self-negotiated lavish employment
5 agreements. For 2014, Long and Hoch's employment agreements, as amended, called for
6 compensation payments to them valued at \$591,000 and \$566,000, respectively (consisting of
7 annual salaries of \$375,000 and \$350,000, respectively, and bonuses valued at \$216,000 each).
8 Using the \$0.17 closing price of the Company's common stock on December 29, 2014, Long and
9 Hoch each received stock valued at \$1.36 million as part of the December 2014 Stock Grant.
10 Adding the salaries and bonuses they received for 2014, Long and Hoch each received total
11 compensation for 2014 valued at \$1,640,000.

12 60. Moreover, by early 2010 the Company's only shareholder-approved
13 compensation plan had already expired. Accordingly, the shares underlying the December 2014
14 Stock Grant were made outside the guise of a shareholder-approved plan.

15 61. Because the December 2014 Stock Grant is indefensible, Defendants attempted to
16 hide it.

17 62. On June 5, 2015, Payment Data filed a Schedule 14A Proxy Statement with the
18 SEC (the "2015 Proxy") with the SEC in connection with its 2015 Annual Meeting of
19 Shareholders. The 2015 Proxy included a Summary Compensation Table which purportedly set
20 forth "all compensation paid or earned by" the Company's executive officers during
21 2014. Nowhere in the Summary Compensation Table, or the accompanying footnotes or narrative
22 is there any mention of the December 2014 Stock Grant. Indeed, in past years the Company
23 disclosed the value of stock awards that were granted in the prior year in the "Bonus" column of
24

1 the Summary Compensation Table with a discussion of the award in the footnotes to the table.
2 The 2015 Proxy contains no such disclosure of the December 2014 Stock Grant.

3 63. In only one instance in the entire 2015 Proxy is there any sign that these awards
4 were made. The 2015 Proxy includes an “Outstanding Equity Awards at Fiscal-Year End” table,
5 which displays unvested stock awards held by each of Long, Hoch, Morrison, and Keller,
6 including awards made as far back as December 2005. Each insider has an entry devoted to the
7 December 2014 Stock Grant, simply noting the date of grant (December 29, 2014) and the
8 number of shares received. Indeed, in footnote 2 to the table, the terms of each award included in
9 the table are explained, except for the December 2014 Stock Grant which has no discussion or
10 explanation.

11 64. The Officer Defendants’ actions in granting themselves excessive compensation
12 during 2013 and 2014 harmed the Company and constitute a breach of their fiduciary duties.

13 65. Kirby was the lone “independent” director on the Board responsible for
14 overseeing the Officer Defendants. Kirby breached his fiduciary duties by failing to implement
15 any controls whatsoever — let alone adequate internal controls — that would have ensured that
16 the amount and form of executive compensation was awarded by independent and disinterested
17 persons.

18 66. With respect to the December 2014 Stock Grant, not only did Kirby not take any
19 measures to prevent the unfair grant, but Kirby was complicit in the wrongdoing. Specifically, on
20 December 29, 2014, the same date that Long, Hoch, Morrison, and Keller received the 22 million
21 shares, Kirby was also granted 500,000 shares of Payment Data common stock.
22
23
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67. The 2015 Proxy conveniently describes the grant of 500,000 shares to Kirby as compensation for his service on the Board. But notably, it was the first time *since 2008* that Kirby had been granted an equity award for his service on the Board.

68. The timing was no coincidence. Since everyone else had their hand in the till, Kirby joined in as well.

69. Additionally, the December 2014 Stock Grant also directly harmed the Company's minority public shareholders.

70. Specifically, the December 2014 Stock Grant resulted in a transfer of substantial voting power from the Company's minority public shareholders to the Defendants, who effectively control the Company.

71. As disclosed in the 2015 Proxy, there were 183,539,547 shares of Payment Data common stock outstanding as of May 8, 2015. As of that same date, the Defendants collectively owned 91,705,865 shares of Payment Data common stock (see column A in chart below), representing 49.97% of the voting power of the Company (column B). Taking away the 22.5 million shares granted to the Defendants as part of the December 2014 Stock Grant (column C), the Defendants would have owned 42.97% of the Company's voting power (column D).

	(A)	(B)	(C)	(D)
Long	39,759,169	21.66%	31,759,169	19.72%
Hoch	38,390,111	20.92%	30,390,111	18.87%
Morrison	5,410,695	2.95%	2,410,695	1.50%
Keller	6,445,390	3.51%	3,445,390	2.14%
Kirby	1,700,500	0.93%	1,200,500	0.75%
Total	91,705,865	49.97%	69,205,865	42.97%

72. In other words, as a result of the December 2014 Stock Grant, the collective voting power of the Defendants increased *by approximately 7%*, from 42.97% to 49.97%.

1 73. Accordingly, the harm resulting from the exorbitant December 2014 Stock Grant
2 was not confined to an equal dilution of the economic value and voting power of each of the
3 Company's outstanding shares. A separate, direct harm also resulted: Defendants extracted in a
4 zero-sum fashion economic value and voting power from Payment Data's minority shareholders.
5 As a consequence, the minority shareholders have been harmed, uniquely and individually, to the
6 same extent that the controlling shareholder Defendants have correspondingly benefited.

7 74. As a result, Plaintiff brings a direct claim on behalf of the minority public
8 shareholders to recover damages resulting from the December 2014 Stock Grant.

9 **DEMAND FUTILITY ALLEGATIONS**

10 75. Plaintiff brings Counts I and III derivatively on behalf of Payment Data to redress
11 injuries suffered, and to be suffered, by the Company as a direct and proximate result of
12 Defendants' misconduct.

13 76. Plaintiff has owned Payment Data stock continuously during the time of the
14 wrongful course of conduct and continues to hold Payment Data stock.

15 77. Plaintiff will adequately and fairly represent the interests of Payment Data in
16 enforcing and prosecuting its rights and has retained counsel competent and experienced in
17 shareholder derivative litigation.

18 78. At the time of filing the Board consists of the following five directors: Defendants
19 Long, Hoch, Kirby, and non-Defendants Miguel A. Chapa and Kirk E. Taylor (both of whom
20 were added to the Board in April 2015 after all of the wrongdoing alleged herein occurred).

21 79. Plaintiff did not make a demand on the Board prior to instituting this Action. A
22 pre-suit demand upon the Board is futile.

1 80. Long and Hoch each received compensation that is being challenged in this
2 lawsuit. They have a strong financial incentive to not authorize any corrective action that would
3 force them to disgorge the improper compensation they granted themselves. Accordingly, Long
4 and Hoch are interested in this Action and thus would not be able impartially to consider a
5 demand.

6 81. Defendant Kirby was the lone “independent” director responsible for overseeing
7 management. Yet Kirby did nothing to prevent Long, Hoch, Morrison, and Keller from granting
8 themselves excessive compensation and substantial voting power. Kirby failed to implement any
9 internal controls whatsoever — let alone adequate internal controls — that would ensure that
10 executive compensation was awarded by independent and disinterested persons. To the contrary,
11 Kirby allowed the executive officers themselves to determine their own compensation.
12 Moreover, Kirby was complicit in their wrongdoing, taking part in the same December 2014
13 Stock Grant that harmed the Company and its minority shareholders. Accordingly, Kirby would
14 (a) never sue Long, Hoch, Keller, and Morrison to recover the excess compensation, and (b)
15 faces a substantial likelihood of liability for allowing and participating in the wrongdoing.

16 82. Demand is thus futile as to Long, Hoch, and Kirby — a majority of the current 5-
17 person Board — and accordingly Plaintiff is excused from making a demand on the Board.

18 **CLASS ACTION ALLEGATIONS**

19 83. Plaintiff brings Count II as a class action pursuant to Federal Rule of Civil
20 Procedure 23 on behalf of Payment Data common shareholders that owned stock on December
21 29, 2014 (the “Class”). Excluded from the Class are Defendants and their affiliates, immediate
22 families, legal representatives, heirs, successors or assigns and any entity in which Defendants
23 have or had a controlling interest.
24

1 84. The Class is so numerous that joinder of all members is impracticable. While the
2 exact number of Class members is unknown to Plaintiff at this time and can only be ascertained
3 through discovery, Plaintiff believes that there are thousands of members in the Class. As of
4 May 8, 2015, over 183 million shares of Payment Data common stock were outstanding. All
5 members of the Class may be identified from records maintained by Payment Data or its transfer
6 agent and may be notified of the pendency of this action by mail, using forms of notice similar to
7 that customarily used in securities class actions.

8 85. Questions of law and fact are common to the Class, including, *inter alia*, whether
9 the compensation paid to Defendants was unfair, whether the compensation improperly
10 transferred voting control from the Company's minority shareholders to Defendants, and whether
11 Defendants breached their fiduciary duties to the members of the Class.

12 86. Plaintiff's claims are typical of the claims of the other members of the Class.
13 Plaintiff is committed to prosecuting this action, will fairly and adequately protect the interests of
14 the Class, and has no interests contrary to or in conflict with those of the Class that Plaintiff
15 seeks to represent.

16 87. The prosecution of separate actions by individual members of the Class would
17 create the risk of inconsistent or varying adjudications for individual members of the Class and
18 of establishing incompatible standards of conduct for the party opposing the Class.

19 88. Conflicting adjudications for individual members of the Class might as a practical
20 matter be dispositive of the interests of the other members not parties to the adjudications or
21 substantially impair or impede their ability to protect their interests.

22 89. Defendants have acted on grounds generally applicable to the class, making
23 appropriate final injunctive relief with respect to the Class as a whole.
24

COUNT I
Breach of Fiduciary Duty
(Derivative Claim against All Defendants)

90. Plaintiff repeats each and every allegation contained above as if fully set forth herein.

91. As officers and directors of the Company, each of the Defendants owed the Company and its shareholders fiduciary duties.

92. The Defendants (other than Kirby) breached their fiduciary duty of loyalty by granting themselves compensation during 2013 and 2014 in amounts that were excessive and unfair to the Company.

93. Kirby breached his fiduciary duties to the Company by failing to implement any controls whatsoever — let alone adequate internal controls — that would have ensured that the amount and form of executive compensation was awarded by independent and disinterested persons. To the contrary, Kirby allowed the executive officers themselves to determine their own compensation, which resulted in the transfer of excessive compensation to the Officer Defendants.

94. As a result of the Defendants' actions, the Company has been and will be damaged.

95. Plaintiff and the Company have no adequate remedy at law.

COUNT II
Breach of Fiduciary Duty
(Direct Claim against All Defendants)

96. Plaintiff repeats each and every allegation contained above as if fully set forth herein.

1 97. The Defendants breached their fiduciary duties to the Company's minority public
2 shareholders by granting themselves the December 2014 Stock Award.

3 98. The issuance of the 22.5 million shares of Payment Data common stock
4 underlying the December 2014 Stock Award resulted in an improper transfer of economic value
5 and voting power from the Company's minority public shareholders to Defendants, who
6 effectively control the Company. As a result of such wrongdoing, the economic value and voting
7 power of the Company's controlling shareholder increased while that of the Company's public
8 minority shareholders correspondingly decreased.

9 99. Defendants' actions, in stripping away economic value and voting power from the
10 Company's minority public shareholders, were designed to advance their own interests to the
11 detriment and expense of the Company's minority public shareholders, and constitute a breach of
12 their fiduciary duties.

13 100. As a result of the misconduct described above, the Defendants have caused loss
14 and damages to Plaintiff and the Company's minority shareholders for which Plaintiff seeks
15 appropriate judicial relief.

16 **COUNT III**
17 **Unjust Enrichment**
 (Derivative Claim against Long, Hoch, Morrison, and Keller)

18 101. Plaintiff repeats and realleges each and every allegation contained above as if
19 fully set forth herein.

20 102. Defendants Long, Hoch, Morrison, and Keller were unjustly enriched by the
21 receipt of excessive compensation, and it would be unconscionable to allow them to retain the
22 benefits thereof.

103. To remedy the unjust enrichment of Long, Hoch, Morrison, and Keller, the Court should order them to disgorge the excess compensation.

104. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of an order as follows:

A. Disgorging the excessive compensation (both cash and stock payments) granted to Defendants during 2013 and 2014;

B. Awarding damages against all Defendants in favor of the Company as a result of Defendants' breaches of fiduciary duties, plus pre-judgment and post-judgment interest;

C. As to Count II, declaring this action to be a class action and certifying Plaintiff as the Class representative and his counsel as Class counsel;

D. As to Count II, awarding damages against Defendants in favor of the Company's minority public shareholders as a result of Defendants' breaches of fiduciary duties, plus pre-judgment and post-judgment interest;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable allowance of fees and costs for Plaintiff's attorneys, experts, and accountants; and

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1 F. Granting Plaintiff such other and further relief as the Court may deem just and
2 proper.

3 Dated this 20th day of April, 2016.

4 **ALDRICH LAW FIRM, LTD.**

5 /s/ John P. Aldrich
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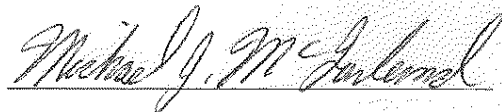
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VERIFICATION

I, Michael McFarland, under penalties of perjury, hereby do declare that I am a plaintiff in the foregoing complaint, that I have read the complaint, and that the facts therein are true to my own knowledge, except to matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true and correct to the best of my knowledge, information, and belief.

Dated: April nd 22, 2016

A handwritten signature in cursive script, reading "Michael J. McFarland", written in black ink.

Michael McFarland